

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY
COURT NO. 13**

26 LEY LLC
Plaintiff Below,

VS

TONYA IRVIN
Defendant Below,

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C.A. No. JP13-18-011089

TRIAL DE NOVO

Submitted: November 16, 2018
Decided: November 26, 2018

APPEARANCES:

26 Ley LLC, Plaintiff appeared through Form 50 agent John R. Ley
Tonya Irvin, Defendant appeared pro se

Sean P. McCormick, Deputy Chief Magistrate
Marie E. Page, Justice of the Peace
Nina M. Bawa, Justice of the Peace

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY
COURT NO. 13**

CIVIL ACTION NO: JP13-18-011089

26 LEY LLC VS TONYA IRVIN

ORDER ON TRIAL DE NOVO

This case is a summary possession action brought by Plaintiff 26 Ley LLC against Defendant Tonya Irvin on August 29, 2018. The case was originally heard before a single judge on October 11, 2018. After trial, a judgment was entered in favor of the Defendant Tonya Irvin on the case-in-chief and in favor of Counterclaim Defendant 26 Ley LLC on the counterclaim. Plaintiff 26 Ley LLC filed a timely appeal pursuant to 25 Del. C. § 5717. Trial de Novo was held on November 16, 2018.

At the *de novo* hearing, Plaintiff 26 Ley LLC was represented by Form 50 Agent John Ley. Defendant Tonya Irvin was self-represented. The three-judge panel consisted of Deputy Chief Magistrate Sean McCormick, Judge Page and Judge Bawa.

Plaintiff 26 Ley LLC seeks rent, late fees and possession of the rental unit from Defendant. Plaintiff mailed a 5-day notice to Defendant on August 11, 2018 via certificate of mailing demanding \$5380.00. Plaintiff argues that he was not notified of any mold issue until October 11, 2018. Plaintiff submits into evidence the 5-day notice, rental agreement, bank statements, accounting records, and various correspondence with Defendant. Plaintiff testifies that he had tried to work with Defendant but she had been behind on rent for almost two years.

Defendant asserts a verbal counterclaim for conditions of the rental unit, including mold from a prior leak in which repairs were done but the carpet was not replaced. Defendant submits into evidence photographs of the conditions of the rental unit from mid-October 2018 and an email requesting repairs from October 2018 sent to Plaintiff.

After a careful review of the evidence and testimony presented, the Court finds that the Plaintiff met the burden of proof on the case-in-chief to show that Defendant failed to pay rent as required. Defendant did not dispute the amount owed. On the case-in-chief, the Court awards to Plaintiff \$6991.33.

On the counterclaim, the Court finds that the tenant failed to meet the burden of proof. 25 Del. C. § 5306 states:

- (a) If there exists any condition which deprives the tenant of a substantial part of the benefit or enjoyment of the tenant's bargain, the tenant may notify the landlord in writing of the condition and, if the landlord does not remedy the condition within 15 days following receipt of notice, the tenant may terminate the rental agreement. If such condition renders the premises uninhabitable or poses an imminent threat to the health, safety or welfare of the tenant or any member of the family, then tenant may, after giving notice to the landlord, immediately terminate the rental agreement without proceeding in a Justice of the Peace Court.

The tenant did not provide sufficient testimony or evidence to show that there was a condition of the rental unit which substantially deprived her of the benefit of her bargain. Therefore, the Court finds for the landlord against the tenant on the counterclaim.

The Court finds, by a preponderance of the evidence, for the Plaintiff. Therefore, judgment is awarded in favor of Plaintiff 26 Ley LLC and against Defendant Tonya Irvin for \$6991.33 plus \$45.00 court costs plus \$28.83 per diem rent plus possession plus post-judgment interest at the rate of 7.75% per annum.

IT IS SO ORDERED 26th day of November, 2018

/s/ Sean P. McCormick

SEAN P. MCCORMICK

Deputy Chief Magistrate

On behalf of the 3-Judge Panel



Information on post-judgment procedures for default judgment on Trial De Novo is found in the attached sheet entitled Justice of the Peace Courts Civil Post-Judgment Procedures Three Judge Panel (J.P. Civ. Form No. 14A3J).